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No. 92-1640

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In the Supreme Court of the United States

OCTOBER TERM, 1992

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ET AL., PETITIONERS

v.

RAMIRO MARTINEZ, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether a federal district court has jurisdiction under the Labor-Management Reporting and Disclosure Act over a federal employee's claims involving his right to union office, where the union admits members who are employed in both the public and private sector.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 980 F.2d 1039. The opinion of the district court (Pet. App. 9a-13a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 12, 1993. The petition for a writ of certiorari was filed on April 12, 1993. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

1.a. The Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401 *et seq.*, was Congress's first major attempt to regulate the internal affairs of labor unions. See generally *Local No. 82, Furniture & Piano Moving* v. *Crowley*, 467 U.S. 526 (1984). The Act defines covered "[l]abor organization[s]" as organizations in an industry affecting commerce in which employees participate and which deal with "employers" concerning terms and conditions of employment. 29 U.S.C. 402(i). The Act expressly excludes from its definition of employer "the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof." 29 U.S.C. 402(e). Consistent with the statutory definitions, Department of Labor regulations provide that a union is outside the LMRDA's scope only if it represents solely government workers and does not deal with a private employer concerning the terms and conditions of employment. See 29 C.F.R. 451.3(a)(4).

Title I of the LMRDA provides union members with an extensive "bill of rights" guaranteeing to each member equal rights to vote and otherwise participate in union decisions, freedom from unreasonable restrictions on speech and assembly, and procedural safeguards against improper discipline. See 29 U.S.C. 411. Title I rights are enforceable by private actions brought by union members against labor organizations in federal district court. 29 U.S.C. 412.

Title IV of the Act is concerned with the election of officers of labor organizations. It requires periodic election of union officers and prescribes minimum

standards to ensure that such elections are fairly conducted. See 29 U.S.C. 481. Title IV enforcement authority resides with the Secretary of Labor: a union member, after exhausting (or pursuing for three months) available internal union remedies, may file a complaint with the Secretary challenging an election. 29 U.S.C. 482(a). The Secretary then must investigate the complaint and, if he finds probable cause to believe that a violation has occurred, file suit in federal district court seeking a new election. See 29 U.S.C. 482(b). With only one exception not applicable here, see 29 U.S.C. 481(c), there is no provision for a private cause of action under Title IV.

b. The Civil Service Reform Act of 1978 (CSRA) comprehensively overhauled the federal civil service system. Title VII of the CSRA, also known as the Federal Service Labor-Management Relations Act, 5 U.S.C. 7101 *et seq.*, governs federal sector labor-management relations, including the activities of recognized labor organizations. Title VII covers "labor organization[s]" "composed in whole or in part of employees, in which employees participate and pay dues," and which deal with federal agencies concerning grievances and conditions of employment. 5 U.S.C. 7103(a)(4); see also 5 U.S.C. 7103(a)(2) (definition of employee), 7103(a)(3) (definition of agency).

Section 7120 of Title VII permits government agencies to recognize labor organizations only if they hold periodic elections subject to prescribed safeguards, and if they assure that their members will have the right to participate in the affairs of the union and will receive fair and equal treatment under its governing rules and fair process in disciplinary proceedings. 5 U.S.C. 7120(a). The Act authorizes

the Department of Labor's Assistant Secretary for Labor-Management Standards to prescribe regulations implementing those standards of conduct, and provides that such regulations shall conform generally to principles applied in the private sector. 5 U.S.C. 7120(d).[1] Accordingly, the Assistant Secretary has promulgated a bill of rights for union members that is virtually identical to the bill of rights in Title I of the LMRDA. 29 C.F.R. 458.2. He also has specified that periodic elections shall be conducted in a "fair and democratic manner" and shall be governed by the election provisions of Title IV of the LMRDA to the extent relevant. 29 C.F.R. 458.29.

Although the substantive provisions of 5 U.S.C. 7120 and its accompanying regulations parallel the LMRDA's provisions, the forum for enforcement is different. *Local 1219, AFGE* v. *Donovan*, 683 F.2d 511, 515 n.13 (D.C. Cir. 1982). Complaints with respect to any violation of 5 U.S.C. 7120—including both "bill of rights" and election violations—are to be filed with the Assistant Secretary. 5 U.S.C. 7120(d). Upon receiving a complaint, the Department conducts an investigation; if there is merit to the allegation, the case proceeds to a hearing before an administrative law judge (ALJ). 29 C.F.R. 458.54-458.57, 458.63-458.66. The ALJ is authorized to recommend a decision to the Assistant Secretary who, if he sustains the complaint, is empowered to order the labor organization to cease and desist from the

[1] As of November 1, 1992, the responsibilities of the Assistant Secretary for Labor-Management Standards under 5 U.S.C. 7120 were transferred to the Department of Labor's Assistant Secretary for Employment Standards. See 57 Fed. Reg. 53,514, 53,516 (1992).

violation and to take other appropriate remedial action. 29 C.F.R. 458.88, 458.91. If a labor organization refuses to comply with the order, the Assistant Secretary may apply to the Federal Labor Relations Authority (FLRA) for enforcement of the order. 29 C.F.R. 458.92; 5 C.F.R. Pt. 2428 (FLRA regulations). Orders of the FLRA are reviewable in the courts of appeals. 5 U.S.C. 7123.

In cases in which the investigation shows that the complaint lacks merit, the Department dismisses the case without referring it to an ALJ for a hearing. 29 C.F.R. 458.58, 458.64(b). The complainant may obtain review of such a dismissal before the Assistant Secretary. 29 C.F.R. 458.59, 458.64(c).

2. Petitioners are the American Federation of Government Employees (AFGE), two of its national officers, and the presidents of three local AFGE unions. Pet App. 4a. AFGE is a federation of more than 1,000 local labor organizations that represent almost 700,000 employees. Pet. App. 2a. The parties stipulated that some of those locals represent private sector employees. Local 1617, an AFGE affiliate, is the exclusive bargaining representative for federal employees in recognized bargaining units at Kelly Air Force Base in San Antonio, Texas; Local 1617 does not represent any private sector employees. *Ibid.*

Respondent Ramiro M. Martinez, a federal employee, was the President of Local 1617 when the events underlying this action began. On January 3, 1989, petitioner Peterson, then AFGE National Vice President, ordered an investigation of a complaint that Martinez had sold a list of Local 1617 members' names and addresses to an insurance company. Pet.

App. 3a. On March 28, 1989, based on the results of that investigation, petitioner Sturdivant, the AFGE President, found probable cause to believe that respondent had accepted money in exchange for the membership list. Sturdivant determined that a fair and impartial trial could not be conducted by Local 1617, and he therefore appointed a trial committee composed of the presidents of three other AFGE locals. *Id.* at 2a-3a.

After a hearing, the trial committee found that respondent had accepted monetary consideration in exchange for the list and that he had not acted in a responsible manner. Pet. App. 10a. The committee therefore concluded that Martinez had violated the union constitution, and it recommended that he be removed from the presidency of Local 1617 and thereafter be barred from any union office for a period of three years. On August 24, 1989, AFGE President Sturdivant accepted the trial committee's findings and recommendations and ordered Martinez's immediate removal and three-year debarment. *Id.* at 3a.

In the interim, on February 8, 1989, Local 1617 held its regularly scheduled election of officers, and Martinez was reelected as local president. Pet. App. 3a, 10a. Shortly thereafter, six unsuccessful candidates for office in that election filed protests with the Local 1617 Election Committee, alleging that certain candidates were afforded access to Local 1617's newspaper, while others were denied that opportunity. The Election Committee dismissed the protests, and two candidates filed appeals with AFGE Vice President Peterson, who initiated an investigation of the election. Based on the results of the investigation, Peterson ordered a new election. *Id.* at 3a. AFGE

President Sturdivant denied Martinez's appeal of that decision. *Id.* at 10a.

On August 25, 1989, Martinez and other Local 1617 officers filed a complaint with the Department of Labor, contending that AFGE's decision to overturn the February 1989 election and to order a new election was arbitrary and capricious and politically motivated, and thereby violated the right of Local 1617's membership to elect their officers. Pet. App. 3a, 10a. The complaint did not challenge AFGE's decision to remove and debar respondent from office.

The Department of Labor conducted an investigation under its CSRA regulations to determine whether Local 1617's election violated 29 C.F.R. 458.29, which, as noted above, requires federal-sector union elections to conform to the substantive requirements of Title IV of the LMRDA. Pet. App. 10a. The Department's investigative findings were consistent with AFGE's determination that union funds had been applied to enhance the incumbent officers' candidacy, and the Department therefore dismissed the complaint. See 29 C.F.R. 458.64(b). The Assistant Secretary, on April 24, 1990, affirmed the dismissal and upheld AFGE's decision to overturn the local election. Pet. App. 10a.

4. Meanwhile, on September 7, 1989, while his CSRA administrative complaint was pending, Martinez filed this action against petitioners under Title I of the LMRDA, 29 U.S.C. 412. Pet. App. 4a. He alleged, *inter alia*, that petitioners violated the Act by removing him from local union office, by barring him from any office for three years, and by invalidating the February 1989 election. *Id.* at 3a.

Petitioners moved to dismiss, arguing that the district court lacked jurisdiction under Section 102 of the LMRDA, 29 U.S.C. 412, over Martinez's claims because they related to a federal sector union and thus must be adjudicated under the administrative scheme provided by Title VII of the CSRA. The Acting Assistant Secretary intervened in the suit and moved to dismiss on the same ground. Pet. App. 4a-5a.

The district court granted the motions to dismiss. Pet. App. 9a-13a. Because Title VII of the CSRA is "the controlling authority for resolving issues involving labor relations in the public sector," the court found the relevant question to be "whether [Martinez] is an employee of the Federal Government and whether his claim involves rights and obligations covered by th[at] statute." Pet. App. 11a. The court held that Martinez is a federal government employee because he is an "individual employed in an agency," 5 U.S.C. 7103(a)(2)(A)—*i.e.*, in the Department of the Air Force at Kelly Air Force Base. Pet. App. 11a. The court further determined that AFGE and Local 1617 are "labor organizations" covered by the CSRA, see 5 U.S.C. 7103(a)(4), because they are composed in whole or part of federal employees and they deal with federal agencies concerning grievances and conditions of employment. Pet. App. 13a.

The court next held that Martinez's complaint involved rights and obligations covered by the CSRA, because his allegation that AFGE unfairly removed and barred him from union office stated a violation of the requirement in 5 U.S.C. 7120(a) that labor organizations provide "fair process in disciplinary proceedings." Pet. App. 13a. The court similarly ruled that

Martinez's allegations of impropriety in AFGE's nullification of the February 8, 1989, election stated a violation of 5 U.S.C. 7120(a)'s mandate that labor organizations conduct "periodic elections * * * subject to recognized safeguards." Pet. App. 13a. Ruling that the CSRA applies to Martinez's claims, the court concluded that it was "compelled to dismiss [Martinez's] Complaint as the CSRA's comprehensive statutory scheme precludes judicial review of the [p]laintiff's claims. *Karahalios* v. *National Federation of Federal Employees, Local 1263*, 109 S. Ct. 1282, 1286 (1989)." Pet. App. 13a.

5. The court of appeals reversed and remanded, Pet. App. 1a-8a, holding that the LMRDA definitional provisions control the jurisdictional question. While noting that there is some "overlap" between the CSRA and the LMRDA, *id.* at 4a n.1, the court concluded that the question in this case "is not whether the CSRA provides a remedy, but whether the LMRDA provides one." *Id.* at 5a n.2. On that issue, the court reasoned that the LMRDA grants federal courts jurisdiction over disputes between a union and its members if the union is a "labor organization" within the meaning of the LMRDA. Pet. App. 2a, 5a-6a (citing 29 U.S.C. 411, 412).[2] The LMRDA defines a "labor organization" as any organization of employees that deals with a statutory "employer" regarding specified subjects, 29 U.S.C. 402(i), and an "employer" includes any employer except the United States or a State or political

[2] The court of appeals observed that it was undisputed that at least some of the rights asserted by Martinez—the rights to vote and otherwise to participate in union affairs—are protected by the LMRDA. Pet. App. 6a.

subdivision of a State, 29 U.S.C. 402(e). The court concluded that a union is therefore covered by the LMRDA if it deals with employers other than governmental bodies, even if it also deals with governmental employers. Pet. App. 6a-7a.

The court noted that in this case, AFGE had stipulated that in addition to representing federal employees, it also "represented" employees of private sector employers. Pet. App. 7a. The stipulation was unclear, however, as to whether AFGE "deal[t] with" private sector employers "concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment," 29 U.S.C. 402(i), which is necessary for AFGE to be a "labor organization" under the LMRDA. See Pet. App. 7a. The court of appeals therefore remanded the case to the district court with instructions to determine whether AFGE "dealt with" private sector employers concerning those topics. If it did, the court of appeals instructed, the case should proceed; if not, the district court should dismiss the complaint. *Ibid.*

The court noted that, unlike the national AFGE, Local 1617 is excluded from coverage under the LMRDA because it is an organization composed solely of federal government employees. Pet. App. 6a n.3. The court concluded that that exclusion was irrelevant, however, because AFGE is the sole union defendant in the case and its actions are the subject of the suit. *Ibid.* In addition, the court explained that under its holding a federal employee may sue under the LMRDA only if his union happens to deal with private employers concerning terms and conditions of employment. *Id.* at 8a. That holding, the court reasoned, merely ensures that all members of a

national union, whether in the private sector or in government employment, have the same rights with respect to that union. *Ibid.*

ARGUMENT

The court of appeals' interlocutory holding that Martinez's claims arising out of his removal from union office may be cognizable under the Labor-Management Reporting and Disclosure Act does not conflict with any decision of this Court or any court of appeals. Review by this Court therefore is unwarranted.

1. The court of appeals held that the district court has jurisdiction under the LMRDA if AFGE deals with private sector employers (as well as federal agencies) concerning the terms and conditions of its members' employment. In so ruling, the court of appeals correctly recognized the general LMRDA principle that a "mixed union"—one that represents both government and private employees—falls within the scope of the LMRDA's coverage provisions.[3] That

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[3] See *Berardi* v. *Swanson Memorial Lodge No. 48*, 920 F.2d 198, 201 (3d Cir. 1990); *Hawaii Gov't Employees Ass'n, Local 152* v. *Martoche*, 915 F.2d 718, 720 (D.C. Cir. 1990); *Hester* v. *International Union of Operating Eng'rs*, 818 F.2d 1537, 1541-1543 (11th Cir. 1987) (per curiam), reaff'd after remand, 878 F.2d 1309 (1989), cert. denied, 494 U.S. 1079 (1990); *Donovan* v. *CSEA Local Union 1000, AFSCME*, 784 F.2d 98, 100 (2d Cir.), cert. denied, 479 U.S. 817 (1986); *New Jersey County & Mun. Council #61* v. *AFSCME*, 478 F.2d 1156, 1157-1158 (3d Cir.), cert. denied, 414 U.S. 975 (1973); *Laity* v. *Beatty*, 766 F. Supp. 92, 98 (W.D.N.Y. 1991), aff'd, 956 F.2d 1160 (2d Cir. 1992) (table); *Kennedy* v. *Metropolitan Suburban Bus Auth.*, 102 L.R.R.M. (BNA) 2088, 2091 (E.D.N.Y. 1979); *NEA* v. *Marshall*, 100 L.R.R.M.(BNA) 2565 (D.D.C. 1979). Cf. *Local 1498, AFGE* v. *AFGE*, 522 F.2d 486, 489-490 (3d Cir. 1975) (national

principle flows, as the court of appeals explained, Pet. App. 6a-7a, from a plain reading of the LMRDA's definitional provisions. The LMRDA defines a labor organization by reference to the employers with which it deals. By defining the term "employer" to include any private sector employer, the LMRDA excludes only those unions that deal exclusively with governmental employers. See 29 U.S.C. 402(e), (i); 29 C.F.R. 451.3(a)(4).[4]

Before the court of appeals, the Assistant Secretary argued that, even though AFGE is a defendant, the case should be resolved under the CSRA because Martinez's claims related primarily to the affairs of Local 1617, a labor organization that is composed exclusively of federal employees and that deals only with a federal agency in representing those employees. For example, Martinez's election charges related to the overturning of the *local* union election.[5]

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union that limits its membership to, and represents only, federal government employees is excluded from LMRDA coverage); *Wright* v. *Baltimore Teachers Union*, 369 F. Supp. 848, 850-855 (D. Md. 1974) (a union that represents government employees exclusively is not covered by the LMRDA).

[4] In *Hester* v. *International Union of Operating Engineers*, the Eleventh Circuit correctly recognized that the LMRDA's definitions do not focus on the employer of the complaining employee, but rather on whether the defendant labor union deals with a covered employer on behalf of any member. See 818 F.2d at 1542. If a union is subject to the LMRDA because it deals with a private employer, "all members, whether employed by the private or public sector, are protected by the Act's bill of rights." *Id.* at n.13.

[5] For this reason, the Assistant Secretary treated Martinez's election complaint as stating a complaint under the CSRA. See p. 7, *supra*. Even if his election claim is cognizable

Similarly, his claims relating to his discipline for misconduct primarily focused on his removal from *local* union office and on the fact that local union members were deprived of the elected officer of their choice. Because those claims arise out of the affairs of a "purely federal" local union, it seemed reasonable to review those claims under the CSRA, which was intended to create a comprehensive scheme to regulate labor-management relations in the federal sector. See generally *Karahalios* v. *National Fed'n of Fed. Employees, Local 1263*, 489 U.S. 527 (1989); *United States* v. *Fausto*, 484 U.S. 439, 443 (1988).

The Assistant Secretary also noted below (see C.A. Br. 19-20 n.10), however, that to the extent that Martinez's complaint could be read as asserting a denial of his rights as a member of the *national* union —as is true of his challenge to his debarment from office in the national union—the district court would have jurisdiction over the suit under the LMRDA. That is so because AFGE had stipulated that it represented both government and non-government employees, and thus was subject to the LMRDA.

In ruling that the district court has jurisdiction under the LMRDA if AFGE deals with private sector employers, the court of appeals disagreed with the government's characterization of Martinez's claims as relating primarily to the local union. It instead viewed this case as implicating his rights with

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under the LMRDA, however, it cannot be asserted in this Title I suit because "the exclusivity provision included in § 403 of Title IV [29 U.S.C. 483] plainly bars Title I relief when an individual union member challenges the validity of an election that has already been completed." *Local No. 82* v. *Crowley*, 467 U.S. at 541.

respect to the national union. See Pet. App. 6a n.3 (although respondent is a member of a purely federal local union, that does not "affect his rights under the LMRDA *as a member of the AFGE*") (emphasis added); *id.* at 8a (court of appeals' decision will ensure that "all members," both federal and private sector employees, "have the *same rights vis-a-vis their national union*") (emphasis added). Because Martinez did suffer a loss of national rights as a result of the discipline AFGE imposed on him, the court of appeals' view is reasonable. As the court of appeals recognized, however, an action against Local 1617 would be "an entirely different case," Pet. App. 6a n.3, because such an action arises exclusively under the CSRA. The court of appeals thus recognized CSRA jurisdiction over unions composed entirely of federal employees, and therefore respected the congressional intent underlying the CSRA.

Petitioners argue (Pet. 16) that the CSRA impliedly repealed the LMRDA to the extent that the LMRDA authorizes claims by a federal employee against mixed unions. That argument assumes, of course, that the CSRA applies to claims against mixed unions in the first place, a proposition contrary to the view of the Department of Labor. See *Laity* v. *Beatty*, *supra*, 766 F. Supp. at 96-97.

In any event, petitioners' argument founders on the principle that implied repeals are disfavored and will be recognized only when there is a clear repugnancy between the two statutes. See *Watt* v. *Alaska*, 451 U.S. 259, 266 (1981). Rather, courts should strive where "'there are two acts upon the same subject * * * to give effect to both if possible.'" *Morton* v. *Mancari*, 417 U.S. 535, 550-551 (1974) (citation

omitted). Here, the LMRDA definitional provisions and implementing regulations expressly include mixed unions, and both the text and purposes of the CSRA can reasonably be construed in a manner that accommodates the LMRDA's coverage of mixed unions. In the context of a national "mixed union" and a purely federal local union, consistency between the two Acts can be achieved, as the Assistant Secretary argued below, by providing for claims by federal local members against the national to be resolved under the CSRA when the gravamen of the claim relates to the local's affairs and the member's rights under the local organization. When, however, the claim relates primarily to the rights of the member vis-a-vis the national organization—as the court of appeals viewed Martinez's claims—it should be decided under the LMRDA. That approach recognizes that in enacting the CSRA, Congress focused on the unique circumstances in the federal sector and manifested no intent to affect the rights of private sector employees. See 5 U.S.C. 7101(b) ("the purpose of this chapter [is] to prescribe certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government"). It also respects the purpose of the LMRDA to ensure that all members of a union that deals with private employers are entitled to the protections of that Act.[6] See generally *Hester* v.

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[6] AFGE's argument that the CSRA impliedly repealed the LMRDA would lead to one of two anomalous results. If the CSRA impliedly repealed the LMRDA as to federal employees, then claims by a federal employee against a mixed union would be heard under the CSRA, even though the same claims against

International Union of Operating Engineers, 818 F.2d at 1542 & n.12.

2. Neither this Court nor any other court of appeals has addressed the relationship between Title VII of the CSRA and the LMRDA in this setting. Moreover, the only district court to consider LMRDA jurisdiction over a complaint by a federal agency employee against a "mixed" union has ruled, like the court of appeals here, that jurisdiction is conferred by the LMRDA. *Laity*, 766 F. Supp. at 97-98. Finally, every court to address the LMRDA jurisdictional provisions in the context of state and municipal employees has concluded that the LMRDA applies to unions consisting of both private sector and governmental employees. See note 3, *supra*. Thus, the decision below does not conflict with any decision of this Court or of any other court.

Petitioners cite (Pet. 7-11) a number of decisions of this Court and the courts of appeals that emphasize the exclusivity of the CSRA scheme in matters of federal employment. As explained above, however, those decisions do not address rights guaranteed by the LMRDA. In particular, the decisions of this Court upon which petitioners rely do not involve the question whether the CSRA takes precedence over an express cause of action under another federal statute.

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the same union by a fellow member who is a private sector employee would be heard under the LMRDA. On the other hand, if the CSRA were deemed impliedly to repeal the LMRDA so as to place mixed "federal/private" unions under exclusive CSRA jurisdiction, private sector employees who were members of such unions would be required to utilize CSRA procedures—a result that would go well outside the focus of the CSRA on federal sector problems.

See *Karahalios*, *supra* (CSRA does not confer on federal employees an implied private right of action against a union for breach of duty of fair representation); *Fausto*, 484 U.S. at 453-454 (absence of provision in CSRA for administrative and judicial review of adverse personnel action alters "implication" of Back Pay Act that Court of Claims is appropriate authority to review agency's personnel determination); *Bush* v. *Lucas*, 462 U.S. 367, 388-390 (1983) (in light of elaborate civil service remedial scheme, Court will not imply cause of action for damages for constitutional tort).[7]

In any event, further review is unwarranted at this time because the court of appeals' jurisdictional ruling is interlocutory. AFGE stipulated that it represented some non-governmental employees. It argued to the court of appeals, however, that even though it admits as members some persons who work in the private sector, it does not "deal with their private employers" and has no contracts with such employers. Pet. App. 7a. The court of appeals remanded the case to the district court to resolve whether AFGE indeed deals "with any private sector

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[7] Petitioners cite *Carter* v. *Gibbs*, 909 F.2d 1452 (Fed. Cir.) (en banc), cert. denied, 498 U.S. 811 (1990), as establishing that "the preemptive effect of the CSRA reaches federal statutes which otherwise expressly authorize suits by federal employees." Pet. 11. In that case, the Federal Circuit held that federal employees could not assert claims for overtime compensation under the Fair Labor Standards Act where their collective bargaining agreement did not exclude those claims from its grievance procedure. The court's holding was based in large measure on a specific provision, 5 U.S.C. 7121(a), pertaining to the exclusivity of grievance procedures that is not applicable in this case. See 909 F.2d at 1455.

employers on behalf of its members concerning the terms and conditions of employment." *Ibid.* Should petitioners establish, as they maintain, that AFGE does not deal with private employers, this LMRDA action will be dismissed for lack of jurisdiction and petitioners will have no need for review by this Court. On the other hand, if AFGE is found to represent private sector employees with respect to their terms and conditions of employment, petitioners may seek review in this Court in due course, based on a more complete record. There is, accordingly, no reason for the Court to depart from its usual practice of declining to review decisions of the courts of appeals at an interlocutory stage of a case. See *Brotherhood of Locomotive Firemen & Enginemen* v. *Bangor & Aroostook R.R.*, 389 U.S. 327, 328 (1967).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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